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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,119	05/04/2007	Patrick Linder	635.46428X00	5487
20457	7590	09/02/2008	EXAMINER	
ANTONELLI, TERRY, STOUT & KRAUS, LLP			STAFIRA, MICHAEL PATRICK	
1300 NORTH SEVENTEENTH STREET				
SUITE 1800			ART UNIT	PAPER NUMBER
ARLINGTON, VA 22209-3873			2886	
			MAIL DATE	DELIVERY MODE
			09/02/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/589,119	LINDER, PATRICK
	<b>Examiner</b> /Michael P. Stafira/	<b>Art Unit</b> 2886

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-5,10,11,13,16 and 17 is/are rejected.  
 7) Claim(s) 6-9,12,14,15 and 18 is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 11 August 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/4/2007;8/11/2006</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

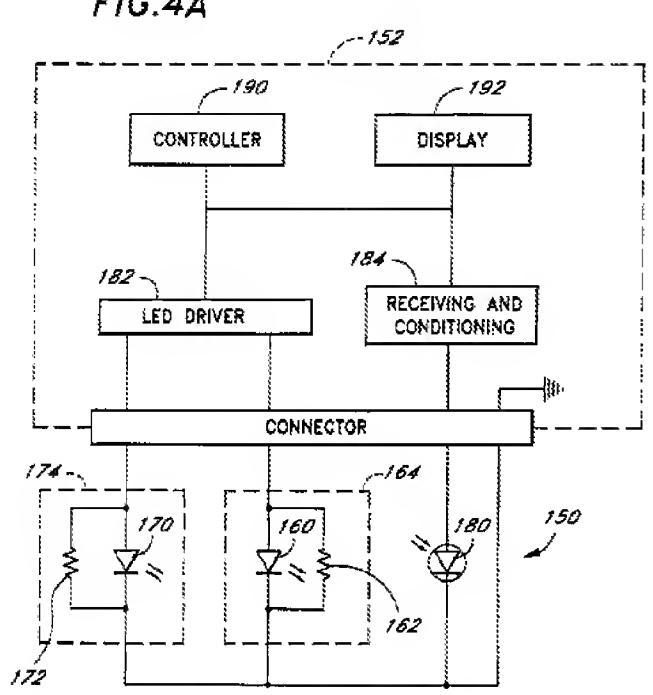
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 10, 11, 13, 16, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diab et al. ('644) in view of Caro ('002).

**Claim 1**

Diab et al. ('644) determining clinical and/or chemical parameters in a medium, utilizing means for transmitting light waves (Fig. 4a, Ref. 160, 170) and means for receiving light waves (Fig. 4a, Ref. 180), the method comprising: delivering at least a part of the transmitted light waves (Fig. 4a, Ref. 160, 170) is delivered into the medium (Fig. 4B, Ref. 200), measuring with the means for receiving light waves at least a part of the light waves reflected in the medium, determining the parameters on the basis of the properties of the transmitted and received light waves (Col. 8, lines 4-23).

**FIG.4A**



Diab et al. ('644) substantially teaches the claimed invention except that it does not show using coherent light. Caro ('002) shows that it is known to provide a light source that is coherent (Col. 11, lines 7-8) for an apparatus for material analysis. It would have been obvious to combine the device of Diab et al. ('644) with the coherent light of Caro ('002) for the purpose of providing a light source that helps decrease the amount of noise measured, therefore increasing the accuracy of the measured data.

### **Claim 2**

Diab et al. ('644) discloses a method including tuning the frequency or wavelength of the coherent light waves in accordance with characteristics of the parameters to be determined (Col. 12, lines 33-45).

### **Claim 3**

Diab et al. ('644) discloses tuning the means for receiving light waves in frequency-selective or wavelength-selective fashion (Col. 12, lines 33-45).

**Claim 4**

Diab et al. ('644) discloses operating the means for transmitting coherent light waves so as to generate wavelengths between 400 and 1400 nm (Col. 12, lines 60-63).

**Claim 5**

Diab et al. ('644) discloses determining cholesterol as parameter according to concentration in the blood (Col. 2, lines 17-20).

**Claim 10**

Diab et al. ('644) discloses establishing a position of a measurement path in the medium with the aid of the means for transmitting coherent light waves and the means for receiving light waves and wherein the determination of the parameters is limited to the measurement path (See Fig. 9B).

**Claim 11**

Diab et al. ('644) discloses operating the means for transmitting coherent light waves, so as to generate light waves in the infrared region (Col. 4, lines 35-37).

**Claim 13**

Diab et al. ('644) discloses a light unit (Fig. 4a, Ref. 160, 170), a phototransistor unit (Fig. 4a, Ref. 180), and a monitoring unit (Fig. 4a, Ref. 192), the monitoring unit being in

operative connection with each of the laser unit (Fig. 4a, Ref. 160, 170) and the phototransistor unit (Fig. 4a, Ref. 180).

Diab et al. ('644) substantially teaches the claimed invention except that it does not show using laser light. Caro ('002) shows that it is known to provide a laser light (Col. 11, lines 7-8) for an apparatus for material analysis. It would have been obvious to combine the device of Diab et al. ('644) with the laser light of Caro ('002) for the purpose of providing a light source that helps decrease the amount of noise measured, therefore increasing the accuracy of the measured data.

### **Claim 16**

Diab et al. ('644) discloses wherein the phototransistor unit exhibits a frequency-sensitive or wavelength-sensitive tuning mode (Col. 12, lines 33-45).

### **Claim 17**

Diab et al. ('644) discloses wherein the frequency or the wavelength of the waves to be detected is tunable (Col. 12, lines 33-45).

### ***Allowable Subject Matter***

4. Claims 6-9, 12, 14, 15, 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Michael P. Stafira/ whose telephone number is 571-272-2430. The examiner can normally be reached on 4/10 Schedule Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tarifur Chowdhury can be reached on 571-272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael P. Stafira/  
Primary Examiner  
Art Unit 2886

August 29, 2008